

**FILED**

**JUL 27 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MICHAEL EUGENE ASHBY,

Petitioner - Appellant,

v.

JOSEPH LEHMAN; et al.,

Respondents - Appellees.

No. 04-35269

D.C. No. CV-03-05385-RJB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Washington state prisoner Michael Eugene Ashby appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition challenging the constitutionality of a prison disciplinary hearing resulting in the loss of 540 days

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of good time credits. We have jurisdiction pursuant to 28 U.S.C. § 2253.

Reviewing de novo, *see Lott v. Mueller*, 304 F.3d 918, 922 (9th Cir. 2002), we vacate and remand.

Upon review of the record, we conclude that the district court, adopting the magistrate's findings and recommendations, never addressed Ashby's due process claim regarding the presentation of staff witnesses. Accordingly, we vacate the judgment and remand for the district court to rule on this claim.

**VACATED and REMANDED.**